IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 398 OF 2003.

Shri Ranjit Satardekar,
son of Dattaram Satardekar,
major, married,
legal practitioner, having
his office on the First
Floor of Azavedo Building,
Opp. Government Quarters,
Patto, Panaji, Goa. ... Petitioner.

VERSUS

1. Smt. Rucmini Raghunath
Narvekar, major, widow,
residing at House No.420,
F-Ward, Sawantwadi,
Sindhudurg District,
Maharashtra.

2. The Disciplinary Committee
No.82 of the Bar Council
of Maharashtra & Goa
through its Registrar
Miss Varsha Rokade,
having its office on
2nd Floor, High Court
Extn. Building, Fort, Mumbai. ... Respondents.

Shri R.V. Kamat, Advocate for the Petitioner.

Shri V.B. Nadkarni, Senior Advocate with Mr. S. Vahidulla, Advocate for the Respondent No.1.

Mr. V.R. Tamba, Advocate for the Respondent No.2.

CORAM: R.J. KOCHAR &
P.V. HARDAS, JJ.

DATE OF RESERVING THE JUDGMENT: 3.9.2003.
DATE OF PRONOUNCING THE JUDGMENT: 10.9.2003.

J U D G M E N T: (PER R. J. KOCHAR, J.)

The petitioner, a legal practitioner, being a learned Member of the Bar Council of India has approached this Court under Articles 226 and 227 of the Constitution

of India with a prayer to issue a writ of certiorari or any other appropriate writ to quash and set aside the impugned Order dated 14.6.2003 passed by the Disciplinary Committee of the Bar Council of Maharashtra and Goa in Disciplinary Case No.102/2002 instituted and pending against the petitioner, initiated on a complaint filed by the respondent No.1, the erstwhile client of the petitioner making very serious allegations of professional misconduct indulged by the petitioner causing grave injury to the rights and property of the respondent No.1, a widow of her deceased husband.

2. The petitioner has narrated the bare facts in his synopsis prefaced to the present petition. According to the petitioner on 8.1.1991 a Sale Deed was executed in respect of the property of the deceased husband of the respondent no.1 in favour of his wife and another. A Special Civil Suit for cancellation of the Sale Deed was filed by the Respondent No.1 on the grounds inter alia, that she was not aware of the Sale Deed and that it was obtained by the Petitioner fraudulently from her deceased husband. She also lodged a criminal complaint against the petitioner on 25.2.2002 whereupon F.I.R./Crime Case No.36/2002 was registered by the Police against the petitioner and four others. The petitioner rushed to the Additional Sessions Judge, Panaji and obtained an anticipatory bail on 16.3.2002. It further appears that

the Respondent No.1 filed a complaint against the petitioner before the Bar Council of Maharashtra and Goa (hereinafter referred to Bar Council). The petitioner was called upon to file his say to the said complaint and the petitioner filed his say on 29.5.2002. It further appears that the petitioner was required to file his written statement in the Civil Suit and he did not want to file his written statement in the Suit. He approached this Court for stay of the proceedings. By an order dated 25.7.2002 this Court directed the petitioner to file his written statement in the said Special Civil Suit No.97/2001/A. It further appears that he has filed his written statement on the merits of the case. As per the procedure followed by the Bar Council, a preliminary inquiry report was sought by constituting a Committee of a single Member of the Bar Council and accordingly on the basis of the findings recorded by the learned Single Member, the Bar Council referred the matter to the Disciplinary Committee consisting of three learned Members of the Bar Council. The petitioner thereupon filed an application before the Committee praying for stay of the proceedings on the ground that criminal proceedings are pending against him in the Criminal Court for the very same allegations. It further appears that the Disciplinary Committee after hearing the petitioner declined to stay the disciplinary proceedings by its Order dated 14.6.2003. It further appears that the

Panaji Police filed charge sheet on 20th June, 2003 against the petitioner and three others. It is further to be noted that the Disciplinary Committee corrected its order and re-delivered the same to the petitioner on 28.6.2003. The petitioner is aggrieved by the aforesaid order passed by the Disciplinary Committee, the respondent No.2 refusing to stay the disciplinary proceedings during the pendency of the criminal complaint before the Criminal Court at Panaji.

3. After hearing the learned counsel on both the sides for some time, and considering the facts and circumstances, we thought it proper to dispose of the Writ Petition finally at this stage itself. The learned counsel on both the sides, have fairly consented for final disposal of the Writ Petition.

4. We therefore grant Rule and make it returnable forthwith. The respondents have waived service.

5. Shri R.V. Kamat, the learned counsel appearing for the petitioner, has strenuously urged that in view of the pendency of the criminal proceedings against the petitioner on the very same charges and allegations levelled by Respondent No.1, the petitioner is being prosecuted before the Criminal Court. He has further pointed out that the complaint before the Bar

Council filed by the Respondent No.1 constitutes the same charges based on the same allegation of facts and that both the complaints are verbatim same. Shri Kamat therefore submitted that the petitioner is being subjected to a three-pronged attack by the respondent No.1. She has filed a Civil Suit in the Civil Court, she has also filed a criminal complaint on the basis of which the police has filed a charge-sheet against the petitioner and the criminal proceedings are pending against him and he is also required to face the disciplinary proceedings on the same charges before the Respondent No.2. Shri Kamat has submitted that the petitioner has to disclose his defence before the Disciplinary Committee and that would prejudice him before the Criminal Court. He has further submitted that it will be in the interest of justice to stay the disciplinary proceedings pending before the Respondent No.2 till the final disposal of the criminal complaint by the Criminal Court. The learned counsel has placed heavy reliance on a judgment of the Supreme Court in the case of **Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and another** (1999) 3 S.C.C., 679.

6. Shri V.B. Nadkarni, the learned senior counsel appearing for the Respondent No.1 seriously objected for stay of the disciplinary proceedings pending before the Respondent No.2. The learned senior counsel

narrated the plight and pathetic story of the Respondent No.1 and the manner in which the petitioner virtually cheated her deceased husband and her family, depriving them of their valuable property by a purported Sale Deed which was got executed by the petitioner purporting to sell and transfer the property in the name of his wife and another keeping the deceased husband of the respondent no.1 and her family in the dark by misusing the so called power of attorney which was in possession of the petitioner. Shri Nadkarni further pointed out that the scope of the criminal proceedings and the disciplinary proceedings are distinct and different and there is distinction of approach in both the proceedings. Shri Nadkarni further submitted that though the facts constituting allegations against the petitioner in both the proceedings are practically the same, the disciplinary proceedings should not be stayed as the criminal proceedings would take perhaps a decade and then it will be too late for the old widow and her children who would be deprived of the enjoyment of the valuable property. According to Shri Nadkarni the petitioner as an Advocate has betrayed the confidence and trust of his clients and has played fraud on them by getting the property transferred in the name of his wife. Shri Nadkarni has relied on the latest judgment of the Supreme Court reported in A.I.R. 2003 S.C., 1796 between **Lalit Popli v. Canara Bank and others**. Shri Nadkarni has

fervently pleaded that let the disciplinary proceedings be completed to reach its logical conclusion without any delay. Shri Nadkarni further assailed the submission of Shri Kamat, the learned Advocate for the petitioner, that the petitioner would be required to disclose his defence in the disciplinary proceedings which would gravely prejudice him in the criminal proceedings. Shri Nadkarni submitted that by filing a written statement before the Civil Court in the Civil Suit, he has already disclosed his defence which would not be at variance before the Disciplinary Committee and it will not make any difference in the criminal proceedings. Shri Nadkarni further submitted that having disclosed the entire defence before a court of law the petitioner would not be able to take any different stand before the Criminal Court. Though Shri Nadkarni tried to take us into the details of the nature of the complaint against the petitioner, it is not proper for us to make any observation on the merits of the allegations of the respondent No.1 as the three authorities are seized of the matter constituting the very same allegations against the petitioner.

7. Shri Tamba, the learned Advocate appearing for the Respondent No.2 supports Shri Nadkarni. He submits that the nature of the disciplinary proceedings before the Bar Council is different and is not criminal in

nature. According to him the Bar Council is competent and obliged under the Advocates Act to look into the complaints filed against the member Advocates of the Bar Council. Shri Tamba further submitted that the petitioner has already filed his reply to the complaint filed by the respondent No.1. The said reply is on record which is in great detail running into 52 pages. Shri Tamba therefore pointed out that there is absolutely no substance or merit in the contention of Shri Kamat that his client would be prejudiced in the criminal complaint if the disciplinary proceedings are not stayed as the petitioner would be required to disclose his defence. Shri Tamba pointed out that he has already disclosed his defence not only before the Civil Court, but also before the Disciplinary Committee.

8. We have seriously considered the facts before us and the submissions made on behalf of the respondents by the learned counsel on both the sides. It is indeed very unfortunate that the noble profession of the legal fraternity has come under cloud. The present is not the only solitary instance. There are a number of such complaints which are pending before the Bar Council against the Advocates. We were shocked and gravely perturbed when we read the other day a news item in a reputed English Daily that one Advocate from Bombay had sold a 15 years old minor girl to a brothel house after

getting her bailed out from the Metropolitan Court. The news item further left our conscience bleeding that there are many more such lawyers practising in Criminal Courts who are indulging in such nefarious and inhuman activities which, if true, is a darkest spot on the noble profession of lawyers. If there is even an iota of truth in such allegations, in the report, that will be a doomsday for the legal fraternity. We are reminded by what the great English author William Shakespeare had said about lawyers: " The first thing we should do is let us kill all the lawyers ". Further what Lord Halifax had said is also to be remembered. He said: " If laws could speak for themselves, they would complain of lawyers in the first place ". We hope and trust that the Bar Councils shall be much more alert and vigilant to protect very zealously the prestige and image of the Legal Profession by time weeding out such lawyers who might have connections with the brothel houses and with the flesh trade.

9. The recent developments and reported cases concerning the members of the legal fraternity have perturbed us much more. If the independent judiciary is the pillar of the Indian democracy, the legal fraternity functioning in the independent judiciary is the very foundation of the democracy. Our profession has a very noble and great past history. We have had a large number

of legal luminaries who have set great ideals of sacrifice, nobility and independence. It is however most unfortunate that the rock bottom of the foundation of the judiciary is being eaten slowly by the white ants like the lawyers against whom their own clients have made serious complaints and who have been finally punished for their misdeeds. The complaint against the petitioner is also of the very same nature. It is possible that the charges levelled against him would be proved and he would also get appropriate punishment. However, by the damage which he has allegedly done to his clients and to the noble profession can never be redeemed and the injury inflicted by his betrayal on the noble profession would never be healed. We wish that the petitioner ought not to have behaved in the manner in which he is required to face the complaints in the Criminal Court and before the Bar Council.

10. We do not find any substance in the contention of the petitioner that if the disciplinary proceedings are allowed to proceed he would be prejudiced as he would be required to disclose his defence when his criminal proceedings are yet to commence. As has been rightly pointed out by the learned counsel for the respondents that the defence of the petitioner has already been disclosed before the Civil Court and before the Disciplinary Committee. He has filed his reply

before the Disciplinary Committee in great and minute detail. He has also filed his written statement before the Civil Court in the suit filed by respondent No.1. It is an admitted position that the complaints in the three forums are of the same nature and they constitute the same facts. If the petitioner has already disclosed his defence before the Civil Court and before the Disciplinary Committee, he has to simply face the criminal proceedings and his defence is well known to the c parties against him. Usually this is the only argument for stay of the disciplinary proceedings advanced by the delinquent employees facing departmental or disciplinary proceedings. The Supreme Court has nowhere laid down any law or any strait-jacket formula requiring stay of the disciplinary proceedings. It has always maintained the position that it would depend upon the facts and circumstances of each case. In the present case we do not find any reason to stay the disciplinary proceedings on the ground that the petitioner would be prejudiced if he is required to file his reply in the disciplinary proceedings. We therefore reject the submission of Shri Kamat that the disciplinary proceedings should be stayed on the said ground. The facts before the Supreme Court in the case of **Capt. M. Paul Anthony** were totally different and therefore the final conclusions reached in that case ensued from the peculiar facts and circumstances in that case. The Supreme Court however

has reiterated the law which has stood the test of time for decades that the criminal case and the departmental proceedings can go on simultaneously depending upon each case. It would be very useful for us to reproduce the neatly drawn conclusions by the Supreme Court deducible from various decisions of the Supreme Court The Supreme Court has summarised the conclusions in paragraph 22 of the Judgment as under :-

> " 22. The conclusions which are deducible from various decisions of this Court referred to above are:
>
> (i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.
>
> (ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.
>
> (iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge-sheet.
>
> (iv) The factors mentioned at (ii) and (iii) above cannot be

considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest. "

11. We may also reproduce what the Supreme Court has stated in paragraph 13 as under :-

" As we shall presently see, there is a consensus of judicial opinion amongst the High Court whose decisions we do not intend to refer to in this case, and the various pronouncements of this Court, which shall be copiously referred to, on the basic principle that proceedings in a criminal case and the departmental proceedings can proceed simultaneously with a little exception. As we understand, the basis for this proposition is that proceedings in a criminal case and the departmental proceedings operate in distinct and different jurisdictional areas. Whereas in the departmental proceedings, where a charge relating to misconduct is being investigated, the factors operating in the mind of the disciplinary authority may be many such as enforcement of discipline or to investigate the level of integrity of the delinquent or the other staff, the standard of proof required in those proceedings is also different than that required in a criminal case. While in the departmental proceedings

> the standard of proof is one of preponderance of the probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubt. The little exception may be where the departmental proceedings and the criminal case are based on the same set of facts and the evidence in both the proceedings is common without there being a variance. "

12. The facts in that case apart from the law laid down by the Supreme Court are very clear. In the latest case of **Lalit Popli** (Supra) the Supreme Court has restated the law in paragraph 16 which we reproduce as under :-

> " It is fairly well settled that the approach and objective in criminal proceedings and the disciplinary proceedings are altogether distinct and different. In the disciplinary proceedings the preliminary question is whether the employee is guilty of such conduct as would merit action against him whereas in criminal proceedings the question is whether the offences registered against him are established and if established what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial are conceptually different. (See State of Rajasthan v. B.K. Meena and ors. (1996) 6 SCC 417). In case of disciplinary enquiry the technical rules of evidence have no application. The doctrine of "proof beyond doubt" has no application. Preponderance of probabilities and some material on record are necessary to arrive at the conclusion whether or not the delinquent has committed misconduct".

13. We may further observe that the disciplinary

proceedings or departmental or domestic inquiries initiated and held by the employers against their employees cannot be put on par with the inquiry in the conduct of a member of the legal fraternity whose honesty and integrity are doubted by his client. The Bar Council is not the employer of such an Advocate. The Bar Council has a totally different and statutory role to play to uphold the dignity of the legal profession. We are more concerned for the dignity and bright image of this noble profession unlike the employers who are more concerned for the discipline of the work-force in the employment. The employers have to observe the conduct and discipline of their employees within the four corners of their establishment and not the morals of the employees. This profession is more concerned for the morals and ethics which will be followed by the work discipline in the profession. Any enquiry in the complaint relating to the honesty and integrity broadly against the member of the Bar Council by any member of the public is not the same enquiry which is held by an employer of his employee for the alleged misconduct committed by the latter. Such enquiry by the master against his servant, arises from the contract of service and the statutory employer-employee relationship. Such an affair is mutually affecting each other. The public or society has no direct role to be played in such matters. While the conduct of an Advocate who is not an employee either of

the Bar Council or of his client, has a very vital role to play in the whole democratic system in the process of rule of law. If he commits any misdeed or misconduct as a member of the legal fraternity, the system at large suffers and people tend to lose confidence in the legal fraternity which is the foundation of the rule of law. And once such unfortunate event takes place, large number of people start suspecting all those who work in the judicial system. Such diseases are infectious and they tend to spread very fast if not cured timely. The disciplinary proceedings against a member of the legal fraternity therefore cannot be equated with a domestic or departmental inquiry against a workman or an employee by an employer. In such cases by and large, the damage is done only to the individual workman or the employee. In the case of a lawyer who misconducts himself, the entire judicial system gets maligned. The nature and character of such enquiry therefore cannot be put on par and can never be equated with the disciplinary proceedings against the delinquent employees by their employers. In our legal fraternity we want to jealously safeguard the noble element of our profession. We have to deal with very ruthlessly any black sheep amongst us so that the course of justice is not polluted even slightly.

We therefore are of the opinion that whatever that may happen in the criminal proceedings or the civil

proceedings initiated by the respondent No.1 the result or outcome of such proceedings can have hardly any bearing on the disciplinary proceedings initiated by the Bar Council against the petitioner. In the background of the aforesaid observations, we feel very strongly that the nature of such proceedings is very distinct and even the approach in such matters has to be very different. We are fortified by the following observations of the Supreme Court in the case of **In re 'M' an Advocate** reported in A.I.R. 1957 S.C., 149:-

> " The Court in dealing with cases of professional misconduct is not concerned with ordinary legal rights, but with the special and rigid rules of professional conduct expected of and applied to a specially privileged class of persons who, because of their privileged status, are subject to certain disabilities which do not attach to other men and which do not attach even to them in a non-professional character. A legal practitioner is bound to conduct himself in a manner befitting the high and honourable profession to whose privileges he has so long been admitted; and if he departs from the high standards which that profession has set for itself and demands of him in professional matters, he is liable to disciplinary action. The fact of there being no specific rules governing the particular situation, is not any reason for accepting a less rigid standard. If any, the absence of rules increases the responsibility of the members of the profession attached to the Supreme Court as to how they should conduct themselves in such situations, having regard to the very high privilege that an Advocate of that Court now enjoys as one

entitled, under the law, to practice in all the Courts in India. "

14. It is therefore crystal clear and beyond any pale of doubt that the position of a lawyer or an Advocate is unique and distinct, different from a delinquent employee. He enjoys high respect in society. He is considered to be a privileged person and society expects him to lead the society in the case of difficulties. Even a little aberration in his conduct would impair not only his personal or individual status, but would instantaneously reflect on the whole legal fraternity as a community. A lawyer therefore has to be very very careful in his behaviour and conduct not only in the Court of law but also with his clients, with his opponents and with the people at large. He is an ambassador of the legal fraternity and the judicial system. If one nun goes astray the whole nunnery is maligned.

15. The workmen or employees are bound by the terms of their employment and by the service conditions, statutory or otherwise. Any breach of any term of the service conditions would attract disciplinary proceedings against them. A lawyer is neither a servant nor an employee of anyone. He has his own conscience which he has to follow. He is wedded to the highest standards of the profession and he is expected never to deviate even slightly from the call of his conscience and the path of

the highest standards of this noble profession which has very noble and high traditions and conventions. Even a whisper of grievance or complaint against him should disturb him and he should try to correct himself so that no finger of accusation is raised by anyone against him. In the disciplinary proceedings held against the employees, the delinquent might get absolved from the charges even on technical grounds. In an enquiry against an erring lawyer, he has to cleanse himself of even the slightest doubt or aspersion cast on him. He must meet the allegations before the disciplinary committee which is constituted by his own peers. Let them judge the allegations levelled against the erring lawyer on the merits and truthfulness or otherwise of such allegations. Let him not take any technical pleas to get away from the accusation, as finally his conscience will not acquit him even if he gets acquitted of the charges in the Criminal Court. It is also well established that even acquittal from the Criminal Court does not spare a delinquent workman from the disciplinary proceedings and he cannot per se get exonerated by the employer.

As a legal fraternity we must cherish our nobility not only in the interest of the profession but in the interest of the whole judicial system. We therefore hold that in no circumstance the disciplinary proceedings against an Advocate should be stayed. Every such enquiry

must be completed irrespective of the criminal or civil proceedings even on the same set of facts and allegations. In the present case the allegation made by the respondent No.1 is of grave nature, that is, the betrayal of her confidence. There is no dispute before us and Shri Kamat has fairly admitted that the property of the respondent No.1 was the subject matter of the Sale Deed whereunder the property stood transferred to the petitioner's wife. Prima facie this is totally an improper act on the part of the petitioner. He ought not to have fallen prey to such temptations. He ought to have kept himself away and aloof from such events. We are sure that the Disciplinary Committee would test his conduct on the basis of the evidence before it and in accordance with law. For these reasons, we are not at all inclined to stay the disciplinary proceedings pending before the respondent No.2.

16. Before we part with this judgment, we wish to remind what Justice Krishna Iyer had said in the case of **Bar Council Maharashtra v. M.V. Dabholkar,** reported in A.I.R. 1976 S.C. 242 which was followed by the Supreme Court in a later judgment reported in 2001 AIR SCW 50 **(D.P. Chadha v. Triyugi Narain Mishra and others)** as follows :-

> " The vital role of the lawyer depends upon his probity and professional lifestyle. The central function of the legal profession is to

> promote the administration of justice." ..... "The Bar cannot behave with doubtful scruples or strive to thrive on litigation. " ....." Law is no trade, briefs no merchandise. "

17. This living legend, The Bheeshmacharya of Judiciary further says, which is immortal:- "An advocate has a prior and perpetual retainer on behalf of Truth and Justice. He can never be discharged from that primary and paramount retainer". We wish the Bar Councils would communicate this message once again to its members. Let these words of Krishna Iyer, J. be printed on the front side of the Sanad to be given to the new entrants. Let it be imbibed by our young souls like the Hypocrite Oath administered to a medical practitioner. Let them be told very emphatically that the professional ethics is the Life Line of this profession, nay every profession, of course !!!

18. If the petitioner is found guilty by the Disciplinary Committee, he would have certainly violated all whatever Justice Krishna Iyer has said above. We are sure that the Disciplinary Committee shall expedite the proceedings and shall come to final conclusion as early as possible without any delay considering the fact that the complainant is an old widow and the dispute is pertaining to old events.

Like Judges even the Advocates like Caesar's wife, must be above suspicion !!

19. Rule is discharged. The petitioner shall pay the sum of Rs.10,000/- as costs to the Respondent No.1.

R. J. KOCHAR, J.

P. V. HARDAS, J.

sl.